Bail Slip

The Appellants/Accused Viz., (1) K. Balan and 2) Varadharajan were directed to be released on Bail in and by the Order of this Court dated 14.8.1997 and made in Crl.M.P.No.3716/1997 in Crl.Appeal No.600/97.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.3.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Criminal Appeal No.600 of 1997

1.K.Balan
2.Varadharajan ... Appellants/Accused

Vs

State Rep.by The Inspector
of Police, Coonoor
Police Station,
The Nilgiris District ... Respondent/Complainant

Criminal Appeal is filed under Section 374 (2) of Cr.P.C. against the judgment passed by the learned Nilgiris District Sessions Judge, Udhagamandalam in S.C. No.27 of 1996 dated 14.07.1997 .

For appellants : Mr. V.K. Muthusamy, S.C.
for Mr.G.Karthikeyan

For Respondent : Mr.V.M.R. Rajendran
Addl. Public Prosecutor

JUDGMENT

J.A.K.SAMPATHKUMAR, J.

The above appeal is filed against the Judgment of learned Nilgiris District Sessions Judge, Udhagamandalam in Sessions Case No. 27 of 1996 dated 14.07.1997, convicting the appellants/accused under Section 324 I.P.C. and sentenced them to undergo Imprisonment for 3 years respectively.

2. Originally, the appellants / accused along with 10 other accused were charge sheeted for various offences under IPC. The said case was numbered as S.C.No. 27 of 1996 on the file of the Nilgiris District Court, Udhagamandalam. Since the accused Rajesh @ Anantharaman was absconding

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for a long time, his case was split up from the original case and numbered as S.C.No. 4 of 1997 and decided subsequently.

3. In the meantime, the case against appellants/accused along with 9 other accused was tried and disposed of on 16.7.1997 in S.C.No. 27 of 1996, convicting the appellant/accused under Section 324 I.P.C. and sentenced them to suffer Rigorous Imprisonment for three years, after acquitting for the remaining charges levelled against them. At the same time, the accused namely S.K.Krishnamoorthy, Srinivasan, Manoj @ Manojkumar, Jawahar, Siva @ Sivaraj, Sathyanarayanan, Siva @ Sivakumar, Sudhakar and M. Ganesh who were also concerned in same case were acquitted in respect of all charges levelled against them in the same judgment.

4. The brief facts of the case are as follows:

4.1. The case on hand is with reference to communal clash between Hindus and Muslims at Coonoor. In pursuance of that, while there was a public meeting organised by V.H.P. at Krishnagiri, the people belongs to Muslims intervened and there was a clash between Hindus and Muslims and in that some persons sustained injuries. P.Ws. 10,11,13,14&22 have narrated the incident about the communal clash between Hindus and Muslims. There is no dispute regarding this aspect. Thereafter only the present occurrence took place at the shop/house of the deceased Anwar on the same day at about 9.30 p.m i.e. on 14.4.1995.

4.2.The deceased Anwar is a muslim residing at No.1, Moors Garden, Coonoor and he is also running a bakery shop in his house. One Khadhar Sha was working in the shop of the deceased Anwar. He also sustained injury at the time of occurrence. He was examined as P.W.1. P.W.2, Maimoon Begam is the wife of the deceased. P.W.3, Azaruddin is the brother's son of the deceased. P.W.4, Banalal is the neighbour of the deceased who took the deceased to hospital in his jeep. P.W.5 Sundar, is the neighbour of the deceased who also sustained injury at the time of occurrence on the fateful day i.e. on 14.4.1995 at Coonoor. There was a communal clash between muslim and people belonging to Vishwa Hindu Parishat (V.H.P) group. Infused by the communal motive, on the same day at about 9.30 hours, the appellants/accused came to the shop of the deceased Anwar in the motorcycle bearing registration No.TN-37 F 2855 and parked the motorcycle nearby. The appellants/accused were working under P.W.11 on the date of occurrence and used the said motorcycle at the time of occurrence. M.O.20 is the motorcycle bearing registration No. TN.37-F-2855. M.O.21 is the key bunch. M.O.22 RC Book.

4.3.Before that the accused namely, Rajesh @ Anantharaman concerned in S.C. No.04 of 1997, came in the motorcycle bearing registration No.TN38-1443 and parked the same on the roadside. M.O.23 is the motorcycle. M.O.24 is the key bunch. M.O.32 is the registration Certificate of the motorcycle. The other accused namely S.K.Krishnamoorthy, Srinivasan, Manoj @ Monoj Kumar, Jawahar, Siva @ sivaraj, Sathyanarayanan, Siva @ Sivakumar, Sudhakar and M.Ganesh (A.3 to A.11) came in the van bearing registration No. TN.43-0919 and parked near the scene of occurrence. M.O.19 is the car TN.43-0919 belonging to Devaraj. M.O. 33 is the registration certificate of the car.

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4.4. In the meantime, the accused Rajesh @ Anantharaman who came in the motorcycle M.O.23, entered in to the shop of the deceased Anwar and demanded chocolate. Before the deceased Anwar could give chocolate the accused Rajesh @ Ananthaaman took a bottle containing chocolates and broken the same. When questioned, the accused Rajesh @ Anantharaman took M.O.1 and stabbed the deceased on his chest. In the meantime, the appellants /accused who came in the motorcycle TN.37-F-2855 took the weapon of offence kept in the motorcycle of the accused Rajesh @ Anantharaman came to the shop of the deceased Anwar and assaulted him mercilessly. The accused Varadarajan assaulted Anwar by using Aruval M.O.5 and Iron Rod M.O.4 and caused grievous injuries. At the same time, the accused Balan assaulted Anwar with M.O.6 and caused grievous injuries. The shop boy who was working with the deceased Anwar in the said shop namely Khadhar Sha P.W.1 and the wife of the deceased Maimoon Bagum P.W.2 tried to intervene to prevent further assault. In that process, the accused Rajesh @ Anantharaman assaulted P.W.1 Khadhar Sha with M.O.1 and caused simple injury. The brother's son of the deceased Anwar namely, Azaruddin P.W.3 was playing infront of the shop, witnessed the occurrence. On hearing the noise, neighbours came to the scene of occurrence. P.W.5 Sundar, is the neighbour came there to help, was assaulted by second accused with the weapon of offence and caused grievous injury. Thereafter, all the accused left the scene of occurrence. On hearing the incident, brother of the deceased namely, Salim and neighbour namely Banalal P.W.4 came to the scene of occurrence took the deceased in P.W.4's jeep to Lali hospital at coonoor and admitted him and there he was declared dead.

4.5. At about 10.20 hours, in pursuance of the incident, the shop keeper namely Khadhar Sha P.W.1 gave a complaint Ex.P.1, to the Head Constable P.W.21 and the same was registered as F.I.R.. Ex.P.1 is the complaint given by the shop keeper P.W.1 and Ex.P.29 is the F.I.R. He also seized the blood stained cloth of P.W.1 under form 95. M.0.2-shirt; M.0.3-Banian; Ex.P.28-form 95. He has also sent P.W.1 with a medical memo to the hospital for treatment. Ex.P.35- copy of medical memo.

4.6.On receipt of information from P.W.21, P.W.22 Inspector of Police took up investigation, came to the scene of occurrence on 14.4.1995 at 00.10 hours and prepared a sketch Ex.P.30 in the presence of P.W.6, Anbazhagan and another witness Shajahan. Then, he took photographs of the place of occurrence through Kannan, P.W.15. M.0s 30 and 31 are photos and negatives. He also seized the right leg chappal of the deceased M.O.10, Chocolates M.O.17, glass pieces of the broken jar M.O.13, Steel cap of the broken jar M.0.14, blood stained earth M.O.15, sample earth M.O.16 and banana stem M.O.18 under mahazar Ex.P.3. He also prepared observation mahazar of the scene of occurrence. Ex.P.2 is the observation mahazar.

4.7. Thereafter, P.W.22 having come to know about the death of Anwar, conducted inquest on 15.4.1995 between 8.30 to 11.15 in the presence of Panchayatar at the mortuary of the Coonoor Government Hospital and prepared inquest report Ex.P.31 and sent the dead body for postmortem.

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P.W.22, gave a requisition Ex.P.18 to conduct autopsy on the body of the deceased Anwar. On 15.4.1995 at about 12.30 hours, P.W.17 postmortem doctor conducted autopsy on the body of the deceased Anwar and found 21 injuries and opined that the deceased would appear to have died due to hemorrhage shock and injury sustained on the chest. Ex.P.19 is the postmortem report.

4.8. In the meantime, the injured Sundar P.W.5 and injured Khadhar Sha P.W.1 were admitted in the Coonoor Government Lali hospital on 14.4.1995 at about 10.05 hours and 12.30 hours respectively and subjected for treatment. P.W.16 examined both the injured namely Sundar and Khadhar Sha and noted injuries on them and opined that the injuries sustained by P.W.5 were grievous. Ex.P.16 is the wound certificate given to Sundar P.W.5. Ex.P.17 is the wound certificate given to injured Khadhar Sha. He was examined by P.W.15 at 12.30 hours. Injuries are simple in nature. P.W.15 further opined that the weapon of offence namely M.O.1, M.O.4, M.O.5 and M.O.6 could have caused these injuries. P.W.22 has also came to the hospital, examined P.W.5, and seized his blood stained cloths in the presence of P.W.7 and one Babu under a mahazar. M.O.11 - Shirt; M.O 12- Banian; Ex.P.6 - Mahazar.

4.9. On 18.4.1989 at about 11.00 hours, on information, P.W.22 Inspector arrested the appellants/accused at Parliar - Coonoor in the presence of P.W.9, Gani and one Sulaiman and recorded their confession statement. In fact, they were apprehended by P.W.22 Inspector, while they were riding motorcycle TN.37-F-2855 M.O.20. The said motorcycle was seized under mahazar Ex.P.9. P.W.22 Inspector further seized key bunch, M.O.21. and R.C. book, M.O.22 under mahazar Ex.P.9. Ex.P.8 is the admissible portion of the confession statement of the accused Varadarajan. Ex.P.7 is the admissible portion of the confession statement of the accused Balan.

4.10. Thereafter, accused Balan and Varadharajan took P.W.22 along with with P.W.9 Gani and witness Salim to No.2, Coimbatore Goundapalayam Shoba nagar cross lay out and identified the house of the accused Rajesh @ Anantharaman. Therefore, P.W.22 Inspector of Police arrested the accused Rajesh @ Anantharaman in presence of the said witness. At that time, the accused Rajesh @ Anantharaman was in possession of the motorcycle M.O.23 and also R.C.book of the motorcycle. Therefore, he seized the same under Mahazar Ex.P.10 and also recorded the confession statement of the accused Rajesh @ Anantharaman. Ex.P.11 is the admissible portion of the confession statement of the accused Rajesh @ Anantharaman.

4.11. Thereafter, P.W.22, the appellant/accused, Rajesh @ Anantharaman along with P.W.9 Gani and other witnesses went to stone quarry near Brindhavan School Road, Junction at Coonoor - Ooty Road. From there, the accused varadarajan took out the blood stained cement colour red striped full shirt M.O.25, blood stained wooden handle Aruval M.O.5, and Iron Rod M.O.4 and handed over the same to P.W.22, who inturn seized the same under Mahazar Ex.P12. At the same time, the accused Balan also took out blood stained sandal colour white striped full shirt M.O.26, blood stained wooden handle Aruval M.O.6 and blood stained white colour bordered Dhoti

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M.O.27 and handed over the same to P.W.22 who inturn seized the same under mahazar Ex.P.13. Moreso, the accused Rajesh @ Anantharaman also took out white polyester full shirt M.O.28, blood stained green colour bordered Dhoti M.O.29 and blood stained Pitchva knife M.O.1 and handed over the same to P.W.22 who inturn seized the same under mahazar Ex.P.14. Everything was done in the presence of P.W.9, Gani and witnesses Sulaiman.

4.12. In the meantime, after postmortem, blood stained cloth of the deceased was also sized under Special report by P.W.21 Head Constable and he handed over the same to P.W.22 Inspector. M.O.7 is the white Shirt, M.O.8 is the Lunghi and M.O.9 -Waist card with Thayathu. Ex.P.27 is the special report. Similarly, the blood stained cloth of the injured Khadhar Sha P.W.1 was also received by P.W.22 from P.W.21 who seized the same under form 95.

4.13. P.W.22 Inspector was in search of other accused concerned with the offence of murder of Anwar. On 08.5.1995, at about 17.00 hours at Coonoor Home Wood, he arrested the accused Krishnamoorthy, concerned in S.C.No.27 of 1996 and he was examined in the presence of P.W.6 Anbazhagan and John. In their presence, he seized TN.43-0919 under mahazar along with R.c.book. M.o.19 is the van. M.O. 33 is the R.C.book.

4.14. On 14.7.1995, the connected accused in the said crime surrendered before the Court and came out on bail. On 20.7.1995, P.W.22 Inspector summoned the accused, who were surrendered before the Court, to the police station examined them and obtained statement.

4.15. On 07.8.1995, P.W.22 Inspector examined P.W.13, Varadarajan, who sustained injury by the attack of Muslim and recorded his statement. Ex.P.15 is the copy of the F.I.R registered on the complaint of P.W.13. (Crime No. 287 of 1995)

4.16. On 17.8.1995, P.W.22 Inspector examined P.W.14, Ramesh, who sustained injury by the attack of Muslim and recorded his statement.

4.17. P.W.14, Ramesh gave a complaint to the police station regarding this occurrence. Ex.P.34 is the copy of the FIR registered on the complaint given by P.W.14, Ramesh. (Crime No. 288 of 1995)

4.18. On 28.8.2005, P.W.22 Inspector recorded statement of P.W.12 Ravi, who was also assaulted by muslims.

4.19. In the meantime, P.W.22 gave a requisition to the Court to conduct identification parade in respect of the accused 1 to 3 namely Rajesh @ Anantharaman, Balan and Varadarajan by witnesses P.W.1 Khadhar Sha, P.W.2 Maimoon Bagum, P.W.3 Azaruddin and P.W.5 Sundar. On receipt of requisition Ex.P.24 from P.W.22 Inspector, P.W.19, Judicial Magistrate sent a letter to the jail authorities requesting them to make arrangements to conduct identification parade on 05.05.1995 at coonoor sub jail at 3.00 p.m. in respect of the detained accused by the said witnesses. Ex.P.25 is the letter of the Magistrate to jail authorities. After following all the

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formalities, P.W.19 Judicial Magistrate conducted identification parade in respect of the said accused by the said witnesses. Except witness Sundar, other witnesses have identified all the accused at the time of identification parade. Ex.P.26 is the identification parade.

4.20. On 19.5.1995, P.W.22 Inspector of Police, sent a requisition to Court to send the blood stained cloth and other material objects for chemical and serological test. Ex.P.33 is the requisition of P.W.22. Ex.P.20 is the letter of the Court. On receipt of requisition Ex.P.20, P.W.18 examined blood stained cloths and Material Objects and submitted chemical and serological report. Exs. P.21, 22 and 23 are the report about the identification of blood groups of human origin. He identified 'A' group blood from the Material Objects in column No. 4, 7,12 and 13 referred in Ex.22. After obtaining all the reports concerned to this case, P.W.22 completed the investigation and filed a final report on 07.11.1995 against the accused namely, S.Rajesh @ Anantharaman, K.Balan, Varadharajan, S.K.krishnamurthy, Srinivasan, Manoj, Jawahar, Siva @ Sivaraj, Sathiyanarayanan, Siva @ Sivakumar, Sudhakar and M. Ganesh, under Section 120 B, 324, 426 and 302 IPC.

5. Prosecution has examined 22 witnesses, marked 35 Exhibits and 33 Material objects to prove the guilty act of the accused.

6. The trial court, after considering the evidence on record found the accused guilty for the offence under Sections 324 IPC after diluting the offence under Section 302 IPC and sentenced them to suffer Rigorous Imprisonment for 3 years and acquitting the remaining offences levelled against them. Challenging the said judgment, this appeal has been filed.

7. Heard both sides.

8. Now, the point for consideration is whether the finding of the trial Court in Convicting and sentencing the appellants/accused as stated above, is in accordance with law. To find out whether the finding of the trial Court is in order or not, the following points are to be proved.

(I). Whether communal clash between the muslims on one side and Vishwa Hindu Parishat (V.H.P) on other side is motive for the occurrence?
(II) Whether the deceased Anwar died due to homicide?
(III)Whether the accused Rajesh @ Anantharaman, Balan and Varadharajan have assaulted the deceased Anwar,causing bleeding injuries resulting to is death?

Point No: I

9. It is true that on 14.4.1995 at Coonoor, there was a communal clash between the Muslims and Vishwa Hindu Parishat (V.H.P), while Vishwa Hindu Parishat (V.H.P) organised the public meeting and procession on that date, in which several Hindus have sustained injuries. P.W.6, P.W.10 to P.W.14 and P.W.22 have stated that on the fateful day, when Hindu Munnani, viz., R.S.S., organised public meeting and procession at Coonoor, residents of Muslims in that area assaulted Hindus resulting to injuries sustained by

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the Hindus. In fact, P.W.13 Varadharajan gave a complaint regarding that occurrence and the same was registered in Crime No. 287/95 and Ex.P.15 is the copy of the F.I.R. The complaint given by P.W.14 has been registered in Crime No. 288/95 and the copy of the same is marked as Ex.P.34 through P.W.22. There is no dispute regarding these facts. P.W.14 has also stated that P.W.12 has sustained injury in that incident though P.W.12 has not spoken to that effect. The learned counsel for the appellants has also not disputed this aspect. From the narration of events, we are of the opinion that the motive for occurrence is proved.

Point No.II:

10. It is true that the deceased Anwar, resident of Moors Garden, Coonoor, on 14.4.1995 at about 9.45 a.m. sustained injuries in the hands of some assailants and later succumbed to injuries. Immediately after occurrence, the deceased Anwar was taken to hospital for treatment in the jeep of witness Banalal and admitted in the hospital and later he was, succumbed to injuries. The body of deceased Anwar was examined by the Postmortem Doctor, who opined that the deceased would appear to have died of Haemorrhage, shock and injury to vital organ - Heart. Postmortem Doctor was examined as P.W.17 Ex.P.18 is the Postmortem Report. P.W.22 has also conducted inquest on the body of the deceased Anwar on 15.4.1995 between 8.30 and 11.15 a.m in the presence of Panchayatdar and prepared Inquest Report. Ex.P.31 is the Inquest Report in which it is found that the deceased Anwar died due to injuries sustained by him in the incident. There is no dispute regarding this aspect. There was no confrontation regarding this aspect on the defence side. From the narration of events, we have no hesitation to hold that the deceased Anwar died due to homicide.

Point No: III

11. It is the specific case of the prosecution that the accused (1) Rajesh @ Anantharaman (2) Balan and (3) Varadharajan used the weapon of offence namely M.O.1 (2) M.O.6 (3) M.O.4 and (4) M.O.5 respectively assaulted the deceased Anwar causing profuse bleeding injury resulting to his death. The prosecution relied on the eye witnesses namely Tmt. Maimoon Bagum P.W.2 wife of the deceased Anwar and Azaruddin P.W.3 brother's son of the deceased Khadhar Sha, Khadhar Sha,(P.W.1) shop boy of the deceased coupled with postmortem report, Serological report, blood stained cloths and blood stained weapon of offence to substantiate the guilty act of the accused.

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12. The point for consideration is whether the alleged eye witnesses can be relied on in this case. All the three eye witnesses have stated that they have seen the accused assaulting the deceased Anwar causing bleeding injuries and that the injured was taken to hospital wherein, he was declared dead. The blood stained cloth of the deceased namely lunghi, White Polyester full shirt were marked as M.O.8 and M.O.7 and the same were subjected for Serological test. The blood stained cloth of the deceased contains "A" group origin. The blood stained cloth of the accused Rajesh @ Anantharaman and Balan contains "A" group origin. Moreso, the blood stained cloth of the accused Varadharajan contains

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human blood but the grouping test could not be done. Similarly, weapon of offence used by the said accused were also subjected for Serological test. Weapon of offence used by the accused Varadharajan contains human blood. P.W.18 spoke in detail about the Serological test. According to the prosecution, blood stained cloth of the accused and also material objects used for the commission of offence were seized only in pursuance of their confession statement. It is evident on record that the accused Rajesh @ Anantharaman has assaulted the deceased Anwar with M.O.1, on his chest causing severe damage to the heart. Similarly the accused Balan and Varadharajan assaulted the deceased Anwar with M.O.6 , M.O.4 and M.O.5 respectively causing severe bleeding injuries. Ex.P.19 postmortem report contains these particulars. Postmortem doctor namely P.W.17 corroborates this part of evidence. So much so, on 18.11.1995 at about 11.00 p.m., the accused Balan and Varadharajan were arrested at Barliar and recorded their statement in the presence of P.W.9 Gani and witness Sulaiman by P.W.22. They were apprehended by P.W.22, while they were riding in the Motor cycle bearing Registration No.TN.37 F 2855 which is marked as M.O.20. Key bunch and RC book of the said vehicle were also seized along with motorcycle. They were marked as M.O.21 and M.O.22. They have also given confession statement in presence of P.W.9 Gani and witness Sulaiman. Exs.P.7 and 8 are the admissible portion of the confession statement of the accused Balan and Varadharajan. Thereafter, the accused Balan and Varadharajan took P.W.21 to the house of the accused Rajesh @ Anantharaman and identified him. He was apprehended by P.W.22 and recorded his statement. Ex.P.11 is the admissible portion of the confession statement of the accused Rajesh @ Anantharaman.

13. Thereafter, the accused have taken P.W.22 along with other witness to stone quarry near Brindhavan School Road, and Ooty Road Junction at Coonoor identified the places and took out their respective blood stained cloths and weapon of offence and handed over the same to P.W.22 who inturn seized the same in the presence of P.W.9 Gani and witness Sulaiman under Mahazar P.12, P.13 and P.14.

14. Moreover, On the requisition given by P.W.22, P.W.19 after following all formalities, conducted identification parade in respect of the accused namely (1)Rajesh @ Anantharaman (2) Balan and Varadharajan for identification by the eye witnesses namely (1) Maimoon Begam wife of the deceased (P.W.2), (2) Azaruddin, brother's son of the deceased (P.W.3), (3)Khadhar Sha, shop boy of the deceased (P.W.1) and (4) Sundar, neighbour of the deceased (P.W.5). Except P.W.5 Sundar, other witnesses have identified the accused and stated that they are responsible for assaulting the deceased Anwar at the relevant point of time, date and place in the manner as alleged by the prosecution. Report of Identification parade has been marked as Ex.P.26. From the narration of events, it is apparent that the accused have assaulted the deceased Anwar resulting, to his death.

15. The learned counsel for the appellants by referring to various discrepancies and contradiction in the deposition of prosecution witnesses and contended that the alleged eye witness could not have been present at the time of occurrence.

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16. Now, we have to find out whether there is any truth in the contention of the learned counsel for the appellants. It is to be noted that though the accused are strangers to the eye witnesses, they have identified the accused at the time of identification parade except P.W.5 Sundar. Moreover, the vehicle used for the commission of offence were infact identified by the witnesses since , they have noted the vehicle Number.

17. In fact, the witness Azaruddin, P.W.3 (Juvenile witness at the time of occurrence – age 9) has taken note of the number of the motor cycle on the sand wherein, he was playing at the time of occurrence. This part of evidence has been elicited at the time of cross examination of P.W.3. His evidence reads as follows:

".. .. .. மோட்டார் சைக்கிளின் நம்பரை நான் மணலில் எழுதி வைத்தேன். .. .. .. "

Moreover, the accused namely Balan and Varadharajan were apprehended while they were riding motor cycle bearing No. TN.37 F 2855, which was used for the commission of offence. The vehicle No. TN37 F 2855 has been clearly referred in the complaint Ex.P.1. The presence of witness Azaruddin and playing infront of the shop of the deceased Anwar at the time of occurrence has been referred in Ex.P1. which reads as follows.

".. .. .. முதலாளியின் அண்ணன் பையன் அஜாருதின் கடையின் முன்னால் கரண்ட் லைட் வெளிச்சத்தில் விளையாடிக் கொண்டிருந்தான். அப்பொழுது இரண்டு மோட்டார் சைக்கிளில் மூன்று நபர்கள் கடையின் முன் வந்து நின்றார்கள். .. .. ..

. .. . மோட்டார் சைக்கிளின் நம்பரை மணலில் எழுதி வைத்தேன் .. .. .. "

From the above discussion, it is proved beyond doubt that P.W.3 Azaruddin was very much present at the time of occurrence.

18.The specific submission of the learned counsel for the appellants that since the accused are strangers to the witnesses and that the assailants physical features have not been described properly in the First Information Report, how could it be possible for P.W.22 Inspector of Police to apprehend the assailants concerned in this case. It is to be noted that the vehicle used for the commission of offence has been described in detail in the First Information Report. Moreover, the accused Balan and Varadharajan while riding the said vehicle were apprehended by P.W.22 on identification of the vehicle in presence of P.W.9 Gani and witness Sulaiman.

19. Moreso, the accused Balan and Varadharajan took P.W.22 Inspector to the house of the accused Rajesh @ Anantharaman and identified him and thereafter the said accused was also apprehended by P.W.22. From the above discussion, we are of the view that the submission of the learned counsel for the appellants has to be rejected.

20. It is worthy to mention that the witnesses namely Maimoon Begum , Azaruddin and Khadhar Sha have identified the accused at the time of identification parade. Whereas, the learned counsel for the appellants / accused submitted that these witnesses were taken to the police station and identified the accused Rajesh @ Anantharaman, Balan and Varadharajan and in consequent of that they have identified the accused at the time of identification parade and as such the report of identification parade has to be rejected. Such submission of the learned counsel for the appellants / accused has no force, in view of the fact that the accused at the time of remand have not stated anything about the presence of witnesses in the police station to note down their physical feature, to facilitate to identify them at the time of identification parade. The accused were remanded on 19.4.1995 till 03.5.1996 by coonoor magistrate and the same reads as follows:

"Accused produced at 1.00 p.m. No complaints. Remanded up to 3.5.1996"

21. Moreso, the suggestive case of the accused that the witnesses were taken to police station wherein, they have taken note of physical features of the accused was infact denied by them.

22. The learned counsel for the appellants further contended that the blood group of the accused was not identified and as such it is not safe to rely on the serological report to tag the accused with the commission of offence and render finding against them. In this case, the witnesses have identified the assailants. Moreso, the vehicle used for the commission of offence was also identified by the witnesses. Apart from

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that, the accused Balan and Varadharajan were apprehended by P.W.22 in the presence of P.W.9 Gani and witness Sulaiman while they were riding on M.O.20 which was used for the commission of offence. Apart from that, the weapon of offence used for the commission of offence contains human blood. Moreso, the blood stained cloth of the accused Rajesh @ Anantharaman and the accused Balan also contain blood of "A" origin. Because of the overwhelming evidence against the accused for having participated in the commission of offence, we are of the view that the contention of the learned counsel for the appellants cannot be accepted.

23. It is worthy to note that P.W.9, being the eye witness for arrest of the accused and seizure of weapon of offence along with their blood stained cloth has spoken in detail in support of the prosecution theory. Nothing worthy elicited at the time of cross examination to discredit this witness.

24. It is also elicited at the time of cross examination of P.W.9 Gani that except himself and tea shop owner Sulaiman, no one present at the time of arrest of the accused namely Balan and Varadharajan. The evidence of P.W.9 at the time of cross examination reads as follows:

" .. .. .. அந்த ஒரு மணி நேரம் கழித்து பறப்படும் போது நான், சுலைமான் டீக்கடை காரர் ஆகியோரை தவிர வேறு யாரும் அங்கு இல்லை. .. .. .. "

P.W.22 further supports the evidence of P.W.9 regarding this aspect. It reads as follows:

" .. .. .. மகஜர் சாட்சிகள் எதிர்பாராத விதமாக வந்த சாட்சிகள். .. .. .. "

25. In such circumstances, no one can attribute any motive against the P.W.22 for taking P.W.9 as eye witness for the arrest of the accused and seizure of M.Os. The lower court has also accepted the prosecution theory and rightly convicted the accused for the offence referred in the judgment.

26. Moreso, the defence theory is that the accused were apprehended on 14.4.1995 at about 10.30 p.m. by the Deputy Superintendent of Police and that they were identified by the witnesses at the police station to facilitate the witnesses to identify them at the time of identification parade and as such, the report of the identification parade has no legal value. It is to be noted that the alleged offence took place at about 9.30 p.m on 14.4.1995. Complaint was lodged at about 10.45 pm and investigating officer commenced investigating at 00.01 hours on 15.4.1995. In such circumstances, it is highly doubtful whether the appellants/ accused were really apprehended by the police on 14.4.1995 at about 10.30 p.m. itself as alleged by them. It cannot be believed and therefore, the defence theory has to be rejected in this context.

27. The defence counsel further submitted that soon after the arrest of the accused i.e. on 14.4.1995 itself, they have sent the telegram to the concerned persons for illegal detention, which fact is also evident about the news published in the paper on the next day about the apprehension of the accused in this case, and as such, the arrest of the

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accused and seizure of M.Os on 18.4.1995 as alleged by the prosecution shall not be accepted. In fact P.W.2 denied the suggestive case of the accused at the time of cross examination. If the contention of the learned counsel for the accused is true, the accused ought to have filed the copy of the telegram and also the copy of the paper publication to disprove the prosecution theory. According to them, they are in possession of documentary evidence, namely, copy of telegram and copy of paper publication. But they have miserably failed to produce the same to prove the contention of the prosecution. From the narration of events, we are of the opinion that there is no truth in the defence theory and accordingly, the contention of the defence counsel is rejected.

28. At the time of examination under Section 313 Cr.P.C., it is stated that the witnesses have taken note of their identity at the sub jail also even before the identification parade. But such a case of the accused was not suggested, to any of the prosecution witness and as such, the case of the accused has to be rejected.

29. The learned counsel for the appellant further submitted that on 14.4.1995 itself the vehicle concerned were seized at the time of apprehension of the accused and as such, the seizure of the vehicle on 18.4.1995 by P.W.22 is contrary to the fact. It is to be noted that P.W.22 has taken necessary steps by addressing a letter to the concerned authorities for tracing the vehicle used for the commission of offence. Such fact was not controverted at the time of cross examination. The Evidence of P.W.22 reads as follows:

" .. .. .. அன்வர் கொலை வழக்கு நடந்தவுடனே கொலை சம்பந்தப்பட்ட வாகன எண்களை அனைத்து காவல் நிலையங்களுக்கும் தெரியப்படுத்திவிட்டோம். .. .. .. "

If the contention of the learned counsel is really true then P.W.22 would not have ventured to address the letter to the concerned authorities for tracing out of the vehicle concerned in the commission of offence. The evidence of P.W.22 at the time of cross examination would justify that the vehicle concerned in this case was seized only on 18.4.1995 and not on 14.4.1995 as alleged by the learned counsel for the appellants. The evidence of P.W.22 regarding this aspect reads as follows:

" .. .. .. பாலியாருக்கு நான், தலைமை காவலர், காவலர் ஜீப்பில் போனோம். மோட்டார் சைக்கிள் வரும் என்று தகவல் தெரிந்து போகவில்லை. .. .. .

. . . . . .
. 14
ம் தேதியே இவர்கள் காவல் நிலையத்தில் வைக்கப்பட்டு பலருக்கு அடையாளம் காட்டப்பட்டு பிறகு அடையாளம் அணவகுப்ப, நடத்தப்பட்டது என்று சொன்னால் சரியல்ல. 1,2 எதிரிகள் காவல் நிலையத்தில் இருந்ததால் அவர்கள் உறவினர்கள் தந்தி கொடுத்ததால் தான் 18ம் தேதி அவர்களை கைது செய்ததாக காட்டினோம் என்றால் சரியல்ல. . . . . "

From the narration of events, we have no hesitation to hold that the contention of the learned counsel for the appellants that the accused were apprehended on 14.4.1995 itself has no merits and accordingly, it cannot be sustained.

30. The learned counsel for the appellants/accused submitted that the deceased ought to have sustained injuries at the time of communal clash, which took place on 14.4.1995 between Muslims on one side and Vishwa Hindu Parishat on the other side and that the accused were apprehended in mistaken identity and as such the prosecution theory has to be rejected.

31. It is to be noted that the communal clash between the Muslims and Hindus took place on 14.4.1995 at Coonoor. Prosecution examined P.W.6 Anbazhagan , P.W.10 to P.W.14 and P.W.22 to prove the earlier incident of communal clash between Hindus and Muslims in the public place at Coonoor.

32. The case on hand happened at about 9.30 p.m at the shop of the deceased Anwar. It is not the suggestive case of the accused/appellants to any one of the eye witnesses that the deceased and other injured have sustained injuries during the time of communal clash between the Hindus and Muslims which took place on 14.4.1995 at Coonoor. The alleged communal clash not happened in the shop of the deceased. Both incidents took place at different point of time, at different places. The first occurrence took place in the public place. The persons sustained injury in the communal clash which took place on the same day at Coonoor, have given complaint to the concerned police station. and FIR was also registered against the assailant. The case on hand is happened much later at 9.30 p.m. in the shop of the deceased on the very same day.

33. So, we are unable to accept the contention of the learned counsel for the appellants / accused that the deceased and other injured sustained injuries only at the time of communal clash between Hindus and Muslims.

34. It is borne out by record that the appellants namely Rajesh @ Anantharaman, Balan and Varadharajan were in possession of deadly weapon namely Aruval and Iron rod causing injuries on the deceased. In fact, the weapon of offence used by Balan and Varadharajan were kept in the motorcycle of the first accused Rajesh @ Anantharaman. So much so, the accused Balan and Varadharajan took the said weapon of offence from the vehicle of the first accused and entered in to the house of the deceased and attacked him. The manner of attack by the accused at the shop of the deceased exposes their pre-planned attack. In this context also, we are of the view that the act of the accused Rajesh @ Anantharaman, Balan and

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Varadharajan amply prove the motive aspect submitted by the prosecution.

35. The learned counsel for the appellants/accused further submitted that since the alleged eye witnesses have taken note of the physical features of the accused Rajesh @ Anantharaman, Balan and Varadharajan at the police station before taking part in the identification parade conducted by P.W.14 , Magistrate, the identification report looses its credibility. He also relied on certain passages contained in the following rulings in support of his contention.

HASIB v. The State of Bihar (AIR 1972 SUPREME COURT 283)

> ".. .. .. The purpose of test identification is to test the statement of the witness made in the Court, which constitutes substantive evidence, it being the safe rule that the sworn testimony of the witness in Court as to the identity of the accused required corroboration in the form of an earlier identification proceeding. Where there is no such substantive evidence at all as to the identity of the accused the earlier identification parade cannot be of any assistance to the prosecution. .. .. .."

PHOOL CHAND v. STATE OF RAJASTHAN (AIR 1977 SUPREME COURT 315)

> ".. .. ..Held that the evidence of the witness was neither wholly unacceptable nor wholly impeccable. There were certain features in this case which should put the Court on its guard not to rely on his bare word, without some assurance from independent sources. As there was no independent evidence on the record to confirm the oral testimony of the witness in regard to the identity and connection of the appellants with the murder, the Court would, as a matter of abundant caution, refrain from accepting the uncorroborated, infirm testimony of the witness, and accord the appellants the benefit of doubt and acquit him. .. .. .."

36. In this case, the accused Rajesh @ Anantharaman was identified by the other accused resulting to his arrest by P.W.22 Inspector of Police. The vehicle used for the commission of offence with registration number referred in the complaint itself leads to the apprehension of the accused Balan and Varadharajan by P.W.22 Inspector of Police. Moreover, the juvenile witnesses Azaruddin (P.W.3) has seen the assailant coming to the scene of occurrence with the vehicle concerned in this case and had make a note of the number of the vehicle over the sand in which he was playing. P.W. 2, Maimaoon Begum and P.W.3, Azaruddin are none other than the wife and brother's son of the deceased. P.W.1 Khadhar Sha is none other than the shopkeeper of the deceased. They were very much present at the time of occurrence. Apart from that, weapon of offence used in the commission of offence were recovered only in pursuance of the statement made by the appellants/ accused. So we are of the view that the decision relied on by the learned counsel for the appellants/accused in support of this contention is not applicable to the facts on hand.

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37. The learned counsel for the appellants / accused further contended that it is not safe to rely on the testimony of juvenile witness namely Azaruddin (P.W.3), as his statement is inconsistent to the other part of the evidence of the prosecution. He also relied on certain passages in the following rulings in support of this contention.

1.PANCHHI v. STATE OF U.P.1998 (7) SCC 177

> Testimony of, must be evaluated more carefully and with greater circumspection and should find some corroboration.

2.MURUGAN FINANCIERS v. P.V.PERUMAL (2005 - 1 CRL. LJ 255)

> ".. .. .. 4O. From the evidence available on recordk it is no doubt true that the preliminary questions were not put to this witness P.W. 2. But it is pertinent to note that on the date of examination his age was shown as 16 years. The credibility of this witness cannot be discredited on the ground on non putting preliminary questions to test whether the witness was capable of giving rational answers or not? In the considered opinion of this Court, this will not alter the situation in any way especially in the light of the age of this witness. It is needless to say that it is not a case of a child witness of a tender age but a grown up boy having sufficient understanding. The hostility towards the prosecution version shown by P.W.1 definitely may have to be viewed in the light of the background of the case also.

38. It is to be noted that the juvenile witness was examined as P.W.3 in this case. His presence has been referred in EX.P1. The fact that P.W.3 was playing at the time of occurrence has been referred in Ex.P.1. Further, the presence of P.W.3, at the time of occurrence was also spoken to by P.W.1. More so, P.W.3 having seen the arrival of motorcycles, at the seen of occurrence, immediately, he made a note of the vehicle Number over the sand on which he was playing. The credibility of this witness was not shaken at the time of cross examination. The narration of events by P.W.3 is corroborated by the other witnesses. In such circumstances, we are of the view that the contention of the learned counsel for the appellants cannot be sustained.

39. The learned counsel for the appellants/ accused further contended that the blood group of the accused was not tested to bring home the guilty act of the accused and as such serological report filed in this case cannot be relied on . The learned counsel for the appellants / accused further relied on the certain passages in the following rulings in support of this contention.

1.V.VIJAYAKUMAR v. STATE OF KERALA (2000 (2) L.W. Crl. 485)

> ".. .. .. Prosecution must establish the different circumstances, beyond reasonable doubt - To justify conviction, the circumstances from which inference of guilt is sought to drawn must be incompatible with innocence of accused and incapable of explanation on any other reasonable hypothesis than that of his guilt - Presence of human blood in the guard room and presence of Group A blood on the

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lunghi that was used as ligature which is also the blood group of accused not accepted as evidence as it was not established that the said blood is of the same group as that of the deceased and also that the said lungHi belonged to A2. .. .. .. "

2. SUBHASH CHAND v. STATE OF RAJASTHAN (2002 (1) SCC 702)

".. .. .. On his arrest he was subjected to medical examination and found to be a potent and capable person. Presence of semen stain or underwear, assuming that the underwear belonged to the accused, though there is no evidence connecting the accused with the crime in question. So also the discovery of Group B bloodstain on the underwear cannot be treated as an incriminating piece of evidence against the accused connecting him with the crime because there is no evidence that the underwear belonged to the accused and further the possibility of the underwear bein stained with the blood of the person to whom it belonged, or the accused if he was wearing it has not been ruled out. .. .. .."

40. It is to be noted that the accused were identified by the eye witnesses. The material objects used for the commission of offence were recovered, in pursuance of the confession statement of the accused by P.W.22 Inspector of Police. Moreover, blood stained cloth of the appellants / accused Rajesh @ Anantharaman, Balan and Varadharajan were also seized and marked in this case. So much so the accused Balan and Varadharajan were apprehended by P.W.22 while riding M.O. 20, in pursuance of the identity of the vehicle referred in Ex.P.1. Rajesh @ Anantharaman was apprehended by P.W.22 Inspector on the information furnished by the accused /appellants Balan and Varadharajan. Section 27 of the Indian Evidence Act relates to the information received from the accused facilitating the investigating officer discovering some fact concerned in the commission of offence. That means a fact discovered in an information supplied by the accused in his disclosure statement is a relevant fact and that is only admissible in evidence if something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused.

41. The above proposition is laid down in the decision in KAMAL KISHORE v. STATE (DELHI ADMINISTRATION) (1997) 2 CRIMES 169 (Del). In this case, the identity of the accused Rajesh @ Anantharaman was within the knowledge of other accused and on information supplied by the accused namely Balan and Varadharajan lead to the identification and arrest of the accused Rajesh @ Anantharaman. This part of evidence is admissible as per Section 27 of the Indian Evidence Act. There cannot be any contra view regarding this aspect. Information furnished by the said accused for the apprehension of the accused Rajesh @ Anantharaman is admissible under Section 27 of the Indian Evidence Act.

42. In such circumstances, we are of the view that the submission of the learned counsel for the appellants / accused coupled with the decision cited by him are not applicable to the facts on hand.

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43. The learned counsel for the appellants/accused further relied on the principles enunciated in the decision VIRSA SINGH v. STATE OF PUNJAB (AIR 1958 SC 465) and submitted that the prosecution failed to prove the intention of the accused to murder of the deceased Anwar at the relevant point of time. The fact that all the accused came together at the relevant point of time, date and place with the possession of deadly weapon namely Aruval and Iron rod, entering the shop of the deceased after identification assaulting him and thereafter assaulting the shop boy P.W.1 who came there to prevent further assault, would prove that the accused have assaulted the deceased only with a view to murder him. The principles laid down in the said ruling which squarely meet the requirement to bring home the guilty act of the accused.

44. The learned counsel for the accused further submitted that motive and recovery of the blood stained cloths of the accused were wholly insufficient to sustain the charge of murder. He also relied on the following ruling in support of this contention.

NARSINBHAI v. CHHATRASINH (AIR 1977 SC 1753)

> ".. .. .. 2.We are prepared to assume in favour of the prosecution that the evidence in regard to the incident of the 23rd near the pond and the evidence in regard to the incident which took place near the Ota of the Pir shows that the respondents had some motive for committing the crime. We may also accept that blood-stained shirt and dhoti were seized from the person of respondent 1 and dharias were seized from the houses of respondents 1 and 3. But these circumstances are in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused. .. .. .. "

45. The said case is based on the circumstantial evidence only. But the case on hand is totally different. Eye witnesses examined to identify the assailant. Apart from the material objects used for the commission of offence were also seized in pursuance of the confession statement of the accused. Moreso, the vehicle used for the commission of offence were also seized in this case. In fact the vehicle used for the commission of offence was mentioned in the F.I.R. itself. In this context, we are of the view that the said ruling is not applicable to the facts on hand.

46. The learned counsel for the appellants / accused further contended that there is conflict between the oral testimony and medical evidence with regard to the dimension and shape of the injuries found on the victim, while comparing the size of the weapon used for the commission of offence, it is not safe to convict the accused/appellants. He also relied on the following decisions in support of this contention.

THAMAN KUMAR v. STATE OF UNIION TERRITORY OF CHANDIGARH (2003 (7) SBR 175)

> "... The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally

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caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye-witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third category no such inference can straightway be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony. .."

47. The deceased Anwar sustained 21 injuries and the same has been clearly mentioned in the postmortem report. P.W.17 being the postmortem doctor has given evidence in support of his report Ex.P.19. He has also explained in details about the measurements of the injuries. He has also identified the weapon of offence and stated that the injuries would have been caused by them. He further opined that the deceased would appear to have died of Haemorrhage, shock and injury to vital organ - Heart. Nothing worthy elicited at the time of cross examination to discredit the evidence of P.W.17. Moreover, the eye witness have also stated that the assailants have used deadly weapons and caused injures. So we are of the view that the contention of the learned counsel for the appellants/accused cannot be sustained.

48. It is to be noted that the motive aspect has been proved beyond any reasonable doubt in this case. The conduct of the accused in identifying the house of the deceased, reaching the scene of occurrence by vehicles and assaulting the deceased with deadly weapons would also prove their pre-planned act on the deceased. In fact, the trial Court has not rendered any specific findings, for acquitting the accused Balan and Varadharajan under Section 302 IPC after diluting the offence into one under Section 324 IPC.

49. The plain reading of the finding rendered at para 44 in the Judgment would reveal that the trial Court has not applied its mind independently while coming to the conclusion that the accused Balan and Varadharajan have really committed the offence punishable under Section 324 only. Further principle of transfer malice has also not taken note of by the trial court. There is overwhelming evidence to show that all the accused came to the scene of occurrence with a plan to murder the deceased Anwar. So, we are of the view that, after accepting the

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prosecution case totally, the finding of the lower court in convicting the accused Balan and Varadharajan under Section 324 IPC alone is based on the extraneous circumstances only.

50. While summing up the case, we are anguish to find out that though the trial Court have accepted the case of the prosecution in toto, diluted the offence of Section 302 IPC and convicted the accused Balan and Varadharajan under Section 324 IPC only, without the support of the medical evidence inspite of knowing the fact of causing injury by the deadly weapon M.Os 4,5 and 6, on the basis of the submission of the learned counsel for the appellants that the fact as such would attract punishment under section 324 only, resulting to miscarriage of justice, detrimental to public interest as the case on hand is one arose out of communal clash between Hindus and Muslims. Since there is no appeal against such finding, we do not want to probe further after a lapse of 10 years and leave the matter as it is.

51. In view of the detailed discussion , we are of the view that the finding of the lower Court in convicting and sentencing the accused under Section 324 IPC referred in judgment does not require any interference and the same is hereby confirmed. The District and Sessions Judge, Udhagamandalam, is directed to secure the accused / appellants and send them to prison to undergo the remaining period of sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1.The District and Sessions Judge,
Udhagamandalam

2.The Inspector of Police,
Coonoor Police Station,
The Nilgiris District

3.The Public Prosecutor,
High Court, Madras

4. The Judicial Magistrate, Coonoor.

5. -do- through the Chief Judicial Magistrate, Coimbatore.

6. The Superintendent, Central Prison, Coimbatore.

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7. The District Collector, Nilgiris District.

8. The Director General of Police, Mylapore, Madras 4.

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